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Patent

Attorney Docket No. GEMS8081.041

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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AUG 21 2006

In re Application of : Brinsfield et al.

Serial No. : 09/689,374

Filed : 10/12/2000

For : MOBILE CLINICAL INFORMATION SYSTEM

Group Art No. : 3626

Examiner : Rachel L. Porter

CERTIFICATION UNDER 37 CFR 1.8(a) and 1.10

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/Robyn L. Templin/
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**PETITION UNDER 37 C.F.R. §1.181 SEEKING
SUPERVISORY REVIEW**

Dear Sir:

Responsive to the Advisory Action mailed August 15, 2006, Applicant requests Supervisory Review and consideration of the following remarks:

Brinsfield et al.

S/N: 09/689,374

REMARKS

In response to a Final Office Action mailed June 1, 2006, Applicant submitted an After Final Amendment July 31, 2006 in which Applicant merely corrected a typographical error to claim 1 and amended claim 26 to incorporate the subject matter of claim 29. Applicant also cancelled claim 29. Previously, claim 29 was dependent directly from claim 26. In the last paragraph, on page 9 of Applicant's remarks, Applicant clearly informed the Examiner that claim 26 has been amended to merely incorporate the subject matter of claim 29.

In an Advisory Action mailed August 15, 2006, the Examiner indicated that the proposed amendments filed after final rejection would not be entered because they raise new issues that would require further consideration and/or search and that they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal. The Examiner went on to further claim that the amendment "alters the scope of the claims."

By merely incorporating the subject matter of a dependent claim does not raise a new issue that would require further consideration and/or search unless the Examiner did not properly search and examine the dependent claims in the first instance. If that is the case, then the Examiner must reopen prosecution and do so. Assuming that not to be the case, clearly then the subject matter of claim 29 has already been "considered" and searched. For at least these reasons, Applicant requests entry of its After Final Amendment mailed July 31, 2006.

Additionally, contrary to the Examiner's assertion, amending an independent claim to incorporate the subject matter of a dependent claim clearly places the application in better form for appeal by materially reducing or simplifying the issues for appeal. For this additional reason, Applicant respectfully requests entry of its July 31, 2006 Amendment as it also reduces and simplifies the issues for appeal.

Applicant believes no fee is due for filing the Petition. However, should a fee be deemed necessary, Applicant hereby authorizes charging of Deposit Account No. 07-0845.

Respectfully submitted,

/Timothy J. Ziolkowski/

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Dated: August 21, 2006
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